

CAUSE NO. _____

ALEXANDRA NARANJO

v.

U.S. BANK, N.A.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR INJUNCTIVE RELIEF,
AND REQUEST FOR DISCLOSURES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Alexandra Naranjo, Plaintiff herein, filing this her Original Petition, Application for Injunctive Relief, and Request for Admissions against U.S. Bank, N.A., Defendant herein, and for causes of action would respectfully show the Court as follows:

DISCOVERY

1. Plaintiff intends to conduct discovery under Texas Rules of Civil Procedure 190.3 (Level 2).

PARTIES

2. Alexandra Naranjo is an individual who resides in Harris County, Texas and may be served with process on the undersigned legal counsel.
3. U.S. Bank, N.A. is an entity which conducts business in Harris County, Texas and may be served with process as follows:

U.S. Bank, N.A.
c/o The Secretary of the State of Texas
1100 Congress, Capitol Bldg., Rm 1E.8
Austin, Texas 78701

JURISDICTION AND VENUE

4. The Court has jurisdiction over U.S. Bank, N.A. because this Defendant is an entity which conducts business Harris County, Texas.

5. The Court has jurisdiction over the controversy because the damages are within the jurisdictional limits of the Court. Venue is mandatory in Harris County, Texas because the subject matter of the lawsuit involves real property which is located in Harris County, Texas. Further, all or a substantial part of the events or omissions giving rise to Plaintiff's causes of action against Defendant occurred in Harris County, Texas thus venue is proper under §15.002(a)(1) of the Texas Civil Practice and Remedies Code.

RELEVANT FACTS

6. The subject matter of the lawsuit is the real property and the improvements thereon located at 19426 Hickory Meadow Lane, Houston, TX 77084 (the "Property").

7. Plaintiff purchased the Property on or about March 6, 2006. During the process of purchasing the Property, Plaintiff executed a Note as well as a Deed of Trust in which Bank of America, N.A. is listed as the Lender.

8. Upon information and belief, the Note and Deed of Trust were transferred to U.S. Bank, N.A. ("Defendant") as lender under assignment, but the original Deed of Trust was not assigned properly.

9. The alleged assignment of the Deed of Trust does not meet the requisites of a valid assignment and, therefore, the chain of title is broken from the original lender.

10. Plaintiff consistently made her mortgage payments in a timely manner; however, she began to have financial difficulties due COVID related financial issues. Realizing that she may soon become in default on her mortgage payments, Plaintiff reached out to Defendant to

obtain options to get the loan current. There were none forthcoming from the Defendant.

11. Accordingly, Plaintiff began researching other options including, but not limited to selling her Property. As such, Plaintiff began looking for buyers. Fortunately, she was able to find an investor who was interested and, soon thereafter, submitted an offer. Accordingly, Plaintiff requested an up to date payoff, which she has not received yet.

12. In July 2024, Plaintiff began to receive a barrage of mail and phone calls from investors wishing to purchase her Property to prevent the coming foreclosure sale scheduled for August 6, 2024. Apparently, Defendant posted Plaintiff's Property for foreclosure sale without sending her proper and timely notice of default, an opportunity to cure the default, notice of intent to accelerate, notice of acceleration, and notice of foreclosure sale as required by the Texas Property Code thereby violating Plaintiff's due process rights as well as the Deed of Trust.

13. At this point, Plaintiff didn't know what to do because the closing on the sale of the Property isn't scheduled until August 17. Plaintiff immediately reached back out to Defendant to inform them of her ability to pay off the loan and request that the foreclosure sale be postponed so that she can complete the sale of her home and obligations under her agreement with the buyer. To date, Defendant has refused to cooperate.

14. Further, Plaintiff is informed and believes, and thereon alleges, that in order to conduct a foreclosure action, a person or entity must have standing under the deed of trust and statute. Plaintiff is informed and believes, and thereon alleges, that in order to assign a deed of trust, some person or entity must rightfully hold the note that the deed of trust secures payment on; an assignment of the mortgage note carries the deed of trust with it, while an assignment of the deed of trust alone is a nullity.

15. Defendant cannot produce any evidence that the Plaintiff's mortgage note has ever

been transferred to them. Any attempt to transfer the beneficial interest of a deed of trust without actual ownership of the underlying mortgage note is void under the law. Therefore, Defendant cannot establish that is entitled to assert a claim in this case such that the assignment to Defendant was effective at all. As such, Defendant does not have standing to foreclosure on the Property.

16. Accordingly, Plaintiff alleges that Defendant is attempting to wrongfully sell her Property at a foreclosure sale on August 6, 2024 in violation of the Deed of Trust, Texas Property Code, Plaintiff's due process rights, and without standing.

CLAIMS

AGENCY & RESPONDEAT SUPERIOR

17. Wherever it is alleged that Defendant did anything, or failed to do anything, it is meant that such conduct was done by Defendant's employees, vice principals, agents, attorneys, and/or affiliated entities, in the normal or routine scope of their authority, or ratified by Defendant, or done with such apparent authority so as to cause Plaintiff to reasonably rely that such conduct was within the scope of their authority. Plaintiff did rely to Plaintiff's detriment on Defendant's representatives being vested with authority for their conduct. Defendant is vicariously liable for the conduct of their employees, vice principals, agents, attorneys, affiliated entities, and representatives of Defendant's affiliated entities by virtue of respondeat superior, apparent authority, and estoppel doctrines.

FIRST CAUSE OF ACTION: BREACH OF CONTRACT

18. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraphs 1 through 17 as if set forth fully herein.

19. The actions committed by Defendant constitute breach of contract because:

A. There exists a valid, enforceable contract between Plaintiff and Defendant;

- B. Plaintiff has standing to sue for breach of contract;
- C. Plaintiff performed, tendered performance, or was excused from performing her contractual obligations;
- D. Defendant breached the contract; and
- E. The breach of contract by Defendant caused Plaintiff's injury.

**SECOND CAUSE OF ACTION:
DECLARATORY JUDGEMENT**

20. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraphs 1 through 19 as if set forth fully herein.

21. Plaintiffs made, presented, or used the assignment associated with the mortgage loan with knowledge that the documents or other records are fraudulent court records or fraudulent liens or claims against the real property. Additionally, Defendant falsely and fraudulently prepared documents required for Defendant to foreclose as a calculated and fraudulent business practice.

22. Therefore, Plaintiff seeks a determination of the rights of the parties pursuant to Tex. Div. Prac. & Rem. Code Ann. § 37.001 (West). An actual controversy has arisen and now exists between Plaintiff and Defendant did not have the right to foreclose on the Property because Defendant has failed to perfect any security interest in the mortgage note as a real party in interest. Thus, the purported power to foreclose, or even to collect monetarily on the note, does not now apply.

23. Plaintiff seeks a determination that Defendant is liable for having failed to properly record all releases, transfers, assignments or other actions relating to instruments Defendant filed or caused to be filed, registered or recorded in the deed of records of Texas in the same manner as the original instrument was required to be filed, registered or recorded.

24. Plaintiff seeks a determination that the power of sale in the Deed of Trust has no force and effect at this time as to Defendant because Defendant's actions in processing, handling, and foreclosure of this loan involved fraudulent, false, deceptive and/or misleading practices including, but not limited to, violations of Texas laws meant to protect the property records and property owner's/mortgage borrowers.

25. Plaintiff seeks a determination that because Defendant does not have standing to initiate foreclosure of the property, that any and all notices sent by Defendant regarding default or foreclosure be declared invalid.

26. Plaintiff seeks a declaratory judgment for quiet title, thereby voiding all documents on file indicating any interest of Defendant in the Property pursuant to the Deed of Trust, subsequent assignment thereof, appointment of substitute trustee documents and voiding any interest in the name of Defendant in the Property. Furthermore, Plaintiff is entitled to peaceful and quiet possession of the Property against Defendant now and forever.

**THIRD CAUSE OF ACTION:
VIOLATION OF TEXAS PROPERTY CODE §5.065**

27. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraphs 1 through 26 as if set forth fully herein.

28. Pursuant to the provisions of the Texas Property Code, the holder of a note must ordinarily give notice to the maker of the holder's intent to accelerate the time for payment as well as notice of acceleration. If the mortgagee intends to accelerate the maturity of the debt, the notice must unequivocally inform the mortgagor of the mortgagee's intention. A proper notice of default must give the borrower notice that the alleged delinquency must be cured; otherwise, the loan will be accelerated and the property will go to foreclosure. Prior to a foreclosure action, the

noteholder is also required to give the home owners clear and unequivocal acceleration notice. Effective acceleration requires two acts: notice of intent to accelerate and notice of acceleration.

29. The actions committed by Defendant constitute violations of the Texas Property Code §5.065 because Defendant never sent proper and timely notice of default, the opportunity to cure the default, notice of intent to accelerate the debt, notice of acceleration, and notice of foreclosure sale which are required in order for Defendant to foreclose on their lien rights to the Property.

DAMAGES:
ACTUAL DAMAGES

30. Plaintiff is entitled to recover her actual damages from Defendant for which Plaintiff pleads in an amount which does not exceed the jurisdictional limits of this Court.

EXEMPLARY DAMAGES

31. Plaintiff is entitled to recover her exemplary damages from Defendant for which Plaintiff pleads in an amount which does not exceed the jurisdictional limits of this Court.

ATTORNEYS' FEES

32. Plaintiff was forced to employ the undersigned attorneys to represent him and has agreed to pay them reasonable attorneys' fees for their services. Plaintiff is entitled to recover her reasonable attorneys' fees pursuant to Chapter 38 of the Texas Civil Practices & Remedies Code for which Plaintiff pleads in an amount which does not exceed the jurisdictional limits of this Court.

CONDITIONS PRECEDENT

33. All conditions precedent to the Plaintiff's right to bring these causes of action have been performed, have occurred, or have been waived.

REQUEST FOR DISCLOSURES

34. Defendant is hereby requested to disclose to Plaintiff, within 50 days of service of this request, the information and material described in Rule 194 of the Texas Rules of Civil Procedure.

EX-PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER

35. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraph 1 through paragraph 29 as if set forth fully herein.

36. Unless Defendant is enjoined, Plaintiff will suffer probable harm which is imminent and irreparable. More specifically, if not enjoined, Defendant may sell the Property at any time during the pendency of this matter thus depriving Plaintiff of ownership of the Property and potentially causing Plaintiff to be dispossessed of the Property. Defendant has posted Plaintiff's Property at a foreclosure sale on August 6, 2024. Plaintiff has no adequate remedy at law because the subject matter is real property, and any legal remedy of which Plaintiff may avail himself will not give him as complete, equal, adequate, and final a remedy as the injunctive relief sought in this Application.

37. Therefore, Plaintiff requests that this Court issue a Temporary Restraining Order and, thereafter, a Temporary Injunction, to restrain Defendant from selling, or re-posting, the real property which is the subject matter of this lawsuit and is commonly known as 19426 Hickory Meadow Lane, Houston, TX 77084 at a foreclosure sale.

38. Plaintiff further requests that, upon trial on the merits, Defendant be permanently enjoined from the same acts listed in Paragraph 36 above.

39. Plaintiff is likely to prevail on the merits of the lawsuit as described above.

40. The granting of the relief requested is not inconsistent with public policy considerations.

41. Plaintiff is willing to post a reasonable temporary restraining order bond and requests that the Court set such bond.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that:

- A. Defendant be cited to appear and answer herein;
- B. The Court conduct a hearing on Plaintiff's Application for Injunctive Relief;
- C. A temporary restraining order be issued restraining Defendant, their agents, employees, and legal counsel, and those acting in concert or participation with Defendant who receive actual notice of the Order, by personal service or otherwise, from selling, or re-posting, the real property which is the subject matter of this lawsuit and is commonly known as 19426 Hickory Meadow Lane, Houston, TX 77084 at a foreclosure sale;
- D. A Permanent Injunction be entered enjoining Defendant from the same acts listed in Paragraph C above; and
- E. Upon final hearing or trial hereof, the Court order a judgment in favor of Plaintiff against Defendant for her actual damages, exemplary damages, reasonable attorneys' fees, all costs of court, and such other and further relief, both general and special, at law or in equity, to which Plaintiff may be entitled.

Respectfully Submitted by,

Law Office of Erick DeLaRue, PLLC

By: /s/ Erick DeLaRue

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ATTORNEY FOR PLAINTIFF

Unofficial Copy Office of Marilynn B. ... District Clerk